

IN THE MATTER OF : BEFORE THE
EDWARD W. BLAKSLEE, JR. : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 09-040V

.....

DECISION AND ORDER

On December 14, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Edward W. Blakslee, Jr. (the "Petitioner") for a retroactive variance to reduce the 10-foot rear setback for accessory structures to approximately one foot for a shed in an R-SC (Residential: Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice, advertising and certification requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Edward W. Blakslee, Jr., testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 3,643-square-foot property is located on the south side of Marioak Drive about 350 feet east of Grommet Drive. It is located in the 2nd Election District and

identified on Tax Map 37, Grid 21, as Parcel 290, Lot 28 (the "Property"). The Property is also known as 7813 Marioak Drive.

2. The rectangular Property is 28 feet wide and 130 feet deep. The Property is improved by a small, two-story single-family, semi-attached dwelling. Behind the house is a hot tub.

3. The petition states the front section of the property slopes toward the concrete drive and the back yard slopes to the rear, and then rises in elevation near the rear property line. This topography creates a drainage swale running west to east in just behind the dwelling.

4. Vicinal Properties. Adjacent properties are also zoned R-SC and are each improved with similar single-family semi-attached or detached dwellings.

5. The Proposal. The Petitioner is requesting a variance from Section 110.D.4.d(1)(c)(ii) to reduce the 10-foot rear setback for accessory structures for an existing shed. The variance plan states the shed is 19'6" wide and 9'8" deep with a three-foot overhang. The shed is located approximately one ("1") foot from the rear property line. A wood fence adjoins the east side of the shed and runs along the rear property line.

6. The Petitioner introduced into evidence photographs of the shed and multiple photographs of neighboring properties with sheds sited on or close to the rear property line.

7. Mr. Blakslee testified to the Property's poor drainage in its mid-section and that the shed's location was the best area to protect from the site's drainage problems.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I may grant a variance only if the Petitioner demonstrates

compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

Compliance with this first criterion is a two-part test. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's six sided lot shape, together with the stream and its attendant easement, as well as the topography and drainage problems are unique conditions causing the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

The shed would be located near or at the rear property line. Sheds in this are common in the neighborhood; one more would not alter neighborhood character. The petition accords with Section 130.B.2.a(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The Petitioner did not create the practical difficulties in complying strictly with the setback regulations, in accordance with Section 130.B.2.a(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The shed is a reasonable size. The variance is therefore the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **5th Day of January 2010**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Edward W. Blakslee, Jr., for a variance to reduce the 10-foot rear setback for accessory structures to approximately one foot for a shed accessory structure in an R-SC (Residential: Single Cluster) Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures or additions on the Property.
2. The Petitioner shall obtain all necessary permits.
3. The Petitioner shall comply with all agency comments.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.